

LAW OFFICES
COHN AND MARKS

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JOEL H. LEVY
ROBERT B. JACOBI
ROY R. RUSSO
RONALD A. SIEGEL
LAWRENCE N. COHN
RICHARD A. HELMICK
WAYNE COY, JR.
J. BRIAN DE BOICE

SUSAN V. SACHS
KEVIN M. GOLDBERG
JOSEPH M. DI SCIPIO

SUITE 300
1920 N STREET N.W.
WASHINGTON, D.C. 20036-1622

TELEPHONE (202) 293-3860
FACSIMILE (202) 293-4827
HOMEPAGE WWW.COHNMARKS.COM

99-248

OF COUNSEL
MARCUS COHN
LEONARD H. MARKS
STANLEY S. NEUSTADT
RICHARD M. SCHMIDT, JR.

DIRECT DIAL: (202) 452-4817
INTERNET ADDRESS: Inc@cohnmarks.com

November 8, 1999

VIA HAND DELIVERY

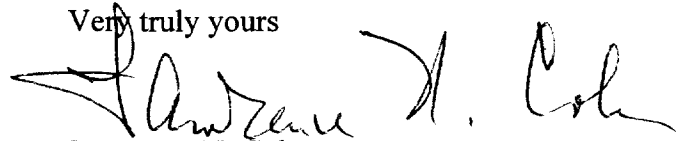
Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Portals II, Filing Counter, TW-A325
445 12th Street, S.W.
Washington, DC 20554

Dear Ms. Salas

On behalf of Tichenor License Corporation, licensee of Station KOVA(FM), Rosenberg, Texas, there are submitted herewith and original and four copies of its Comments in MM Docket 99-248; RM-9697 (Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Galveston and Missouri City, Texas)).

Please direct any communications regarding this filing to the undersigned counsel.

Very truly yours


Lawrence N. Cohn

Enclosures

cc: Lawrence Roberts, Esq.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

RECEIVED
NOV - 8 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 99-284
Table of Allotments,) RM-9697
FM Broadcast Stations.)
(Galveston and Missouri City, Texas))

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Comments

Tichenor License Corporation ("TLC"), licensee of Station KOVA(FM), Rosenberg, Texas, by its counsel, hereby submits these Comments in response to the Notice of Proposed Rule Making ("NPRM") issued by the Commission on September 17, 1999, in the above captioned proceeding.

In the NPRM, the Commission seeks comment on the proposal of KQQK License, Inc. ("KQQK"), licensee of Station KQQK-FM, operating on Channel 293C at Galveston, Texas, to reallocate Channel 293C from Galveston to Missouri City, Texas, and, pursuant to Section 1.420(i) of the Rules, to modify the station's authorization accordingly. In its Petition for Rule Making ("Petition") filed with the Commission on June 24, 1999, KQQK contended, and the

Commission's NPRM comments, that the allotment of Channel 293C to Missouri City warrants consideration because it "could provide the community with its first local aural service . . . " NPRM, Paragraph 3. However, TLC has already proposed the addition of a first local service to Missouri City as a counterproposal in MM Docket No. 99-26. Moreover, as will be explained below, KQQK's Petition is completely unnecessary, and is nothing more nor less than a transparent effort by KQQK to frustrate TLC's proposal to reallocate Station KOVA from Rosenberg to Missouri City. For this reason among others, TLC's proposal to allocate Channel 285C3 to Missouri City should be resolved before the Commission can determine whether KQQK's proposal, if adopted, would, in fact, add a first local aural service in Missouri City.

I. KQQK's Petition Is Disingenuous.

TLC's Station KOVA(FM) operates on Channel 285A at Rosenberg, Texas. Stations KOVA and KQQK-FM broadcast in the Spanish language, and are direct competitors for audience and revenues in the Greater Houston/Galveston market. On March 29, 1999, almost three (3) months before KQQK filed its Petition, TLC timely filed a counterproposal in MM Docket No. 99-26 in which it proposed to replace Channel 285A at Rosenberg with Channel 285C3 at Missouri City, Texas, as Missouri City's first local service and, pursuant to Section 1.420(i) of the Rules, to modify the licensee of Station KOVA(FM) accordingly. This highly salient fact was known to KQQK at the time it filed its Petition, but was deliberately omitted from the text of the Petition.¹ TLC's pending proposal to add Channel 285C3 to Missouri City

¹ The failure of KQQK's Petition to clearly state that TLC had on file a proposal to add Channel 285C3 to Missouri City is disturbing, to say the least. Although the Petition mentions MM Docket No. 99-26 in another context (i.e. TLC's counterproposal also contemplates the allotment of Station KLTO(FM) from Galveston to Crystal Beach, (Continued...))

was also overlooked by the Commission in the NPRM, but this was clearly an inadvertent omission, and not done deliberately as is the case with KQQK.

On June 24, 1999, KQQK filed its Petition which has led the Commission to issue the instant NPRM. The same day, KQQK's parent entity (El Dorado Communications, Inc.) filed Reply Comments and Opposition to Counterproposal ("Opposition") in MM Docket No. 99-26 in which it opposed TLC's Missouri City counterproposal. KQQK filed its Petition for precisely the same reason as KQQK's parent filed its Opposition to TLC's Missouri City counterproposal - i.e., to obstruct TLC's proposal to reallocate Station KOVA from Channel 285A at Rosenberg to Channel 285C3 at Missouri City. The means selected by KQQK to obstruct TLC was to propose changing the community of license of Station KQQK-FM from Galveston to Missouri City, not to enhance service to the public, but in the hope that it would be approved by the Commission before the Commission resolved TLC's Missouri City counterproposal in MM Docket No. 99-26 (which KQQK's parent had opposed), thereby negating TLC's claim for credit under Priority 3 ("first local service") under Revision of FM Assignment Policies and Priorities, 90 FCC 2d 88, 90-93 (1982) ("Revision"). The purely obstructionist motivation for KQQK's Petition is

(...Continued)

Texas) (see Petition, page 3, footnote 11[sic]), there is no mention whatsoever of TLC's Missouri City proposal in the text of the Petition. Although the Narrative Statement of John J. Mullaney ("Mullaney Statement") also contains references to MM Docket No. 99-26, Mr. Mullaney's descriptions of TLC's proposal to move station KOVA(FM) from Rosenberg to Missouri City are, at the very least, both confusing and misleading. See Section I, "General", wherein Mr. Mullaney notes that "Missouri City presently has no licensed AM or FM facility," and then states that TLC "in MM Docket 99-26 proposes the reallocation of Channel 285A from Galveston," thereby implying that TLC has proposed the move of its Galveston station (which is KLTO, not KOVA) to Missouri City. TLC has made no such proposal, and is instead proposing to reallocate its Rosenberg Station KOVA to Missouri City. Therefore, KQQK was fully aware of TLC's pending proposal to add an allotment to Missouri City when it filed its Petition, including the claim that its proposal would bring a first local service to Missouri City. As explained in the text, KQQK's decision not to mention TLC's Missouri City proposal in its petition was done because it obviously hoped (and perhaps continues to hope) that the Commission will consider its proposal to add Channel 293C to Missouri City before the Commission considers TLC's earlier-filed proposal to add Channel 285C3 to Missouri City, thereby depriving TLC's proposal from consideration for providing a first local service to Missouri City.

unmistakably revealed by the simple fact that KQQK could (with Commission approval of a minor change Form 301 application) move its transmitter from its current site to the proposed site specified in the Petition (see Mullaney Statement, page 2) while continuing to place the required principal community contour over all of Galveston. See the attached Engineering Statement of Louis R. duTreil, Sr. (Exhibit 1 hereto). Since KQQK's proposed transmitter move can be achieved without making any change in the station's community of license, it is clear that KQQK's request to change Station KQQK-FM's community of license from Galveston to Missouri City is entirely gratuitous, and its Petition is a disingenuous pleading which should not be entertained by the Commission.

II. The Commission Should Resolve TLC's Pending Proposal to Allot Channel 285C3 to Missouri City and Should Defer Action on KQQK's Petition.

TLC filed its proposal to add Channel 285C3 to Missouri City as the first allotment to that community three months before KQQK filed its proposal to add Channel 293C to Missouri City. For this reason, the Commission should first resolve TLC's proposal for Missouri City in the context of MM Docket No. 99-26 and, in the meantime, it should defer action on KQQK's proposal for Missouri City in the instant proceeding.

Logical necessity requires that the Commission consider the TLC and KQQK proposals sequentially rather than concurrently.² The Commission cannot consider the two proposals to add a "first" allotment to Missouri City concurrently because the Commission would not be able

² There is no technical conflict between the TLC and the KQQK proposals. TLC's proposal to allot Channel 285C3 at Missouri City in MM Docket No. 99-26 is consistent with KQQK's proposal to allot Channel 293C at Missouri City, and the other aspects of TLC's counterproposal are consistent with KQQK's proposal.

to determine which (if either) of the Missouri City proposals should be given credit under Revision for proposing the first “first local service” to Missouri City.

The order in which the Commission addresses the two Missouri City proposals may have a significant impact on the outcome of the proceedings because a proposal to provide “first local service” is Priority 3 under Revisions. TLC contended that its counterproposal would provide a first local service to Missouri City (which currently has no assigned station), and claimed credit under Priority 3. If TLC’s proposal is entitled to credit under Priority 3, it would greatly increase the likelihood that the Commission would approve TLC’s counterproposal. On the other hand, if KQQK’s Petition were considered and resolved in KQQK’s favor before MM docket 99-26 is resolved, it would for all practical purposes defeat TLC’s claim for credit for providing a first local service to Missouri City.³

Sound public policy, as well as simple fairness, requires that the Commission consider TLC’s proposal for Missouri City before it considers KQQK’s subsequently-filed proposal. The Commission should consider TLC’s proposal first because to do so would reward TLC for its initiative in being the first to propose local aural service for Missouri City, rather than rewarding KQQK, which apparently had no intention of proposing service to Missouri City until it became aware of, and then decided to do everything possible to oppose, TLC’s proposal to provide a first local service to Missouri City. Administrative considerations also favor the resolution of TLC’s proposal to provide a first local service to Missouri City before KQQK’s later-filed proposal

³ This, of course, is precisely the reason -- and the only reason -- why KQQK has filed its Petition. See discussion in Section I, above.

because the procedural schedule in MM Docket No. 99-26 is further advanced than the schedule in the instant proceeding (where the opportunity to file reply comments remains open). Thus, in the ordinary course, the Commission will probably be ready to resolve the merits of the proceeding involving TLC's proposal to add Channel 285C3 to Missouri City before it is ready to resolve the instant proceeding. Only after the Commission has carefully and fully resolved MM Docket No. 99-26, with due consideration given to TLC's proposal to provide the first local service to Missouri City under Priority 3 under Revision, should the Commission proceed to address the merits of KQQK's proposal.⁴

III. KQQK's Proposal Is Not Technically Feasible.

When the Commission does address the merits of KQQK's Petition, it should reject the proposal advanced by KQQK because it would cause unacceptable electromagnetic interference ("EMI") and therefore is not technically feasible. According to a study recently performed by TLC's expert FAA consultant, the Federal Aviation Administration ("FAA") will not consent to the establishment of the tower proposed by KQQK in its Petition (at the proposed site or at any nearby site) because such proposal would create unacceptable EMI. See Exhibit 2 (Affidavit of Gary Mikel Allen). It is now established that the Commission will not adopt a rule making

⁴ Assuming, arguendo, that TLC's counterproposal, including the allotment of Channel 285C3 to Missouri City, is approved, KQQK's proposal to add Channel 293C to Missouri City would be ready for consideration, but would obviously not qualify as a proposal to provide a "first local service" to Missouri City; moreover, the approval of TLC's counterproposal would leave Galveston with only two local stations ((KGBC(AM) and KHCB(AM)) in addition to KQQK-FM, and not three stations as assumed by KQQK in its assessment of whether the proposed reallocation of KQQK-FM from Galveston to Missouri City would result in a "preferential arrangement of allotments" under Revision. See Petition, page 3. None of this is, of course, of any concern to KQQK. Its Petition to change the community of license of Station KQQK-FM from Galveston to Missouri City is merely a strategic maneuver, and is unrelated to any legitimate effort to bring additional service to the public. As mentioned (Continued...)

proposal if it concludes, based on the information provided to it by the parties to the proceeding, that the proposal cannot be effectuated due to FAA/EMI problems (e.g., LaFayette, Georgia, 13 FCC Rcd 2093 (Allocations Branch, 1998), and Mt. Joliet and Belle Meade, Tennessee, 12 FCC Rcd 10481 (Allocations Branch, 1997). Mr. Allen's analysis demonstrates that KQQK's proposal would cause unacceptable EMI and would, therefore, be rejected by the FAA. For this reason, KQQK's proposal to allot Channel 295C to Missouri City must be rejected.⁵

Conclusion

For the foregoing reasons, TLC submits that the Commission should evaluate its proposal to add Channel 285C3 as the first local service at Missouri City before it evaluates KQQK's proposal to add Channel 293C at Missouri City, and therefore requests that the Commission defer action in MM Docket No. 99-284 pending final Commission action in MM Docket No. 99-26. When the Commission does consider the merits of KQQK's proposal, it should reject the

(...Continued)

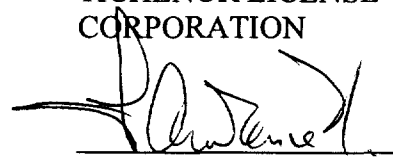
previously, KQQK can improve the facilities of Station KQQK-FM as proposed in its Petition without making any change whatsoever in the station's community of license.

⁵ In objecting to KQQK's Missouri City proposal on the ground that it is not technically feasible due to increased EMI, TLC is mindful that the same contention was advanced by KQQK's parent, El Dorado, in opposition to TLC's counterproposal in MM Docket No. 99-26 to change Station KOVA from Channel 285A at Rosenberg to Channel 285C3 at Missouri City (see pages 5-6 and Exhibit 1 of the Reply Comments and Opposition to Counterproposal filed by El Dorado on June 24, 1999), and that TLC strongly contended that the Commission should reject El Dorado's position (see pages 10-14 of the Supplemental Reply Comments filed by TLC on September 16, 1999). There is no inconsistency between TLC's position with regard to the EMI concerns made against it by El Dorado in the context of MM Docket No. 99-26 and TLC's allegations vis-à-vis the proposal of KQQK in the instant proceeding. First, TLC has demonstrated that El Dorado's proposal is inconsistent with FAA's model regarding EMI (see Exhibit 2) and, under relevant Commission precedent (e.g., LaFayette, Georgia, supra, and Mt. Joliet and Belle Meade, Tennessee, supra) it is incumbent upon KQQK to establish that the EMI problems that are inherent in its proposal can, in fact, be successfully overcome. TLC is confident that the EMI issues raised by El Dorado in opposition to TLC's Missouri City proposal in MM Docket No. 99-26 were successfully rebutted by the expert opinion of TLC's expert FAA consultant (Martin C. Elliott) which was provided to the Commission in a sworn statement appended to TLC's Supplemental Reply Comments. It is now KQQK's responsibility to do the same (if it can). Second, TLC does not want to be prejudiced if the Commission does not share its view of the proper resolution of the EMI issue lodged against it by El Dorado. If the Commission were to reject TLC's Channel 285C3 Missouri City proposal because of the EMI problems which are revealed by the standard FAA model (and without regard to Mr. Elliott's expert opinion that the projected EMI difficulties can be overcome), the Commission should reject KQQK's Missouri City proposal for precisely the same reason.

proposal because it is not technically feasible and, if TLC's allotment proposal for Missouri City is approved, because KQQK's proposal would not effectuate the mandate of Section 307(b) of the Act.

Respectfully submitted

TICHENOR LICENSE
CORPORATION

A handwritten signature in black ink, appearing to read "Roy R. Russo", is written over a horizontal line.

Lawrence N. Cohn
Cohn and Marks
1920 N Street, N.W., Suite 300
Washington, DC 20036-1622
(202) 293-3860

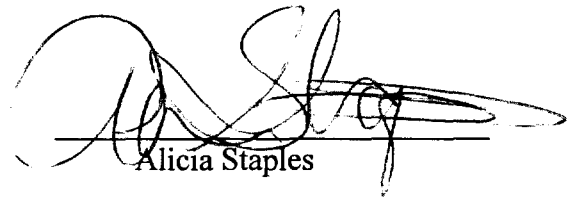
Its Counsel

Date: November 8, 1999

CERTIFICATE OF SERVICE

I, Alicia Staples, hereby certify that on the 8th day of November, 1999, a copy of the foregoing "Comments" was mailed, first-class, postage prepaid to the following:

Lawrence Roberts
Mary L. Plantamura
Davis Wright Tremaine LLP
1155 Connecticut Avenue, N.W.
Suite 700
Washington, DC 20036
Counsel for KQQK License, Inc.



Alicia Staples

Exhibit 1

ENGINEERING STATEMENT
PREPARED FOR
HISPANIC BROADCASTING CORPORATION
STATION KOVA
ROSENBERG, TEXAS

This Statement and the attached map were prepared on behalf of Hispanic Broadcasting Corporation, herein "HBC", licensee of FM broadcast station KOVA. KOVA is Class A station currently licensed for operation at Rosenberg, Texas. By means of rule-making in MM Docket Number 99-26, HBC proposes to upgrade KOVA to Class C3 and change the principal community to Missouri City, Texas. The HBC proposal would provide Missouri City with a first local transmission service.

In another rule-making, MM Docket Number 99-284, KQQK License, Inc., licensee of FM broadcast station KQQK, proposes to change the KQQK's principal community from Galveston, Texas to Missouri City. In that rule-making, a new transmitter location and improved facility for KQQK are proposed.

Employing the specified transmitter location and facilities proposed by KQQK in its Petition for Rule Making, the predicted 70 dBu (3.16 mV/m) and 60 dBu (1.0 mV/m) contours were determined and are shown on the attached map. The proposed facility produces a predicted

Rosenberg, Texas
Page 2 of 2

70 dBu signal over all of Galveston, as well as over all of Missouri City.

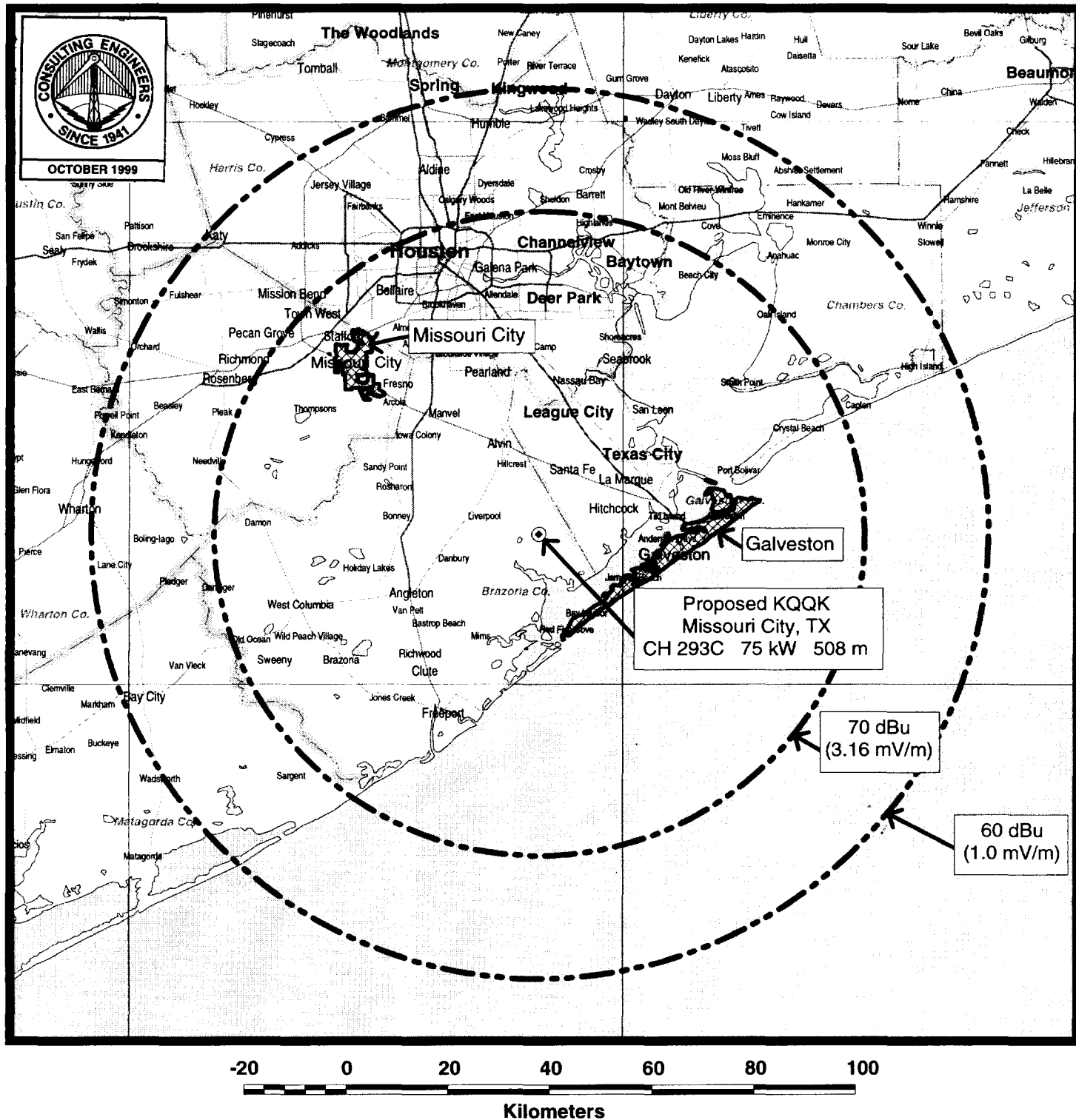
The predicted coverage contours shown on the attached map were determined using the method prescribed in the FCC rules. City boundaries for Missouri City and Galveston are from data contained in the 1990 Census.



Louis R. du Treil, Sr.
du Treil, Lundin & Rackley, Inc.
201 Fletcher Avenue
Sarasota, FL 34237

(941) 329-6000

November 4, 1999



PREDICTED COVERAGE CONTOURS

PREPARED FOR
HISPANIC BROADCASTING CORPORATION

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

Exhibit 2

AVIATION SYSTEMS ASSOCIATES, INC.

Aviation Consultants



ACCIDENT INVESTIGATION
AVIATION SAFETY STUDIES
OBSTRUCTION EVALUATION STUDIES
ENVIRONMENTAL IMPACT STUDIES
AIRPORT STUDIES

23430 HAWTHORNE BLVD.
SUITE 200, SKYPARK BUILDING 3
TORRANCE, CALIFORNIA 90505
(310) 378-3299
FAX (310) 791-1546

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

AFFIDAVIT OF GARY MIKEL ALLEN, Ph.D.

I, Gary Mikel Allen, being first duly sworn, do hereby depose and state that I am the Executive Vice President and an Aviation Consultant at Aviation Systems Associates, Inc. ("ASA"), with offices at 23430 Hawthorne Boulevard, Torrance, California. My qualifications and experience are set forth in the resume attached hereto. See Attachment "A."

ASA has been retained by Hispanic Broadcasting Corporation ("HBC") to conduct an independent analysis of the proposed relocation of KQQK, Channel 293C, owned and operated by KQQK License, Inc. at Galveston, Texas to a site in Missouri City, Texas. Specifically, ASA was requested by HBC to determine whether the proposed allocation would comply with the Federal Aviation Administration's ("FAA") evaluation criteria for electromagnetic interference ("EMI") to the agency's existing and planned air navigational facilities.

The EMI evaluation was conducted with the FAA's Airspace Analysis Model ("AAM"), Version 4.21, as supplied by the FAA's Spectrum Engineering Branch ASM-500. The initial evaluation was conducted on the site proposed by KQQK in its Petition for Rule Making at latitude 29° 16' 03" north and longitude 95° 10' 09" west (North American Datum, 1927). An evaluation was also conducted for KQQK's licensed site at 29° 18' 00.95" north latitude and 95° 06' 40" west longitude. For KQQK's existing location we found that eighteen (18) localizers are potentially affected and simulation runs showed that seven (7) are predicted by the AAM to be actually affected. See Attachment "B." At KQQK's proposed location there are seventeen (17) potentials with seven (7) predicted by the AAM to have actual EMI. See Attachment "C." The most significant findings were that the proposed location exacerbated the EMI at four (4) localizers:

AXH (108.9 MHz) Houston Southwest Airport
HUB (109.9 MHz) William P. Hobby Airport



Offices in Washington, Los Angeles, Honolulu, Kitty Hawk

LBX (109.1 MHz) Angleton Airport
FNF (110.1 MHz) Ellington Field

At AXH and HUB the EMI is substantially worse from KQQK's proposed location

Additional evaluations were conducted using three hypothetical alternative sites approximately five nautical miles southeast to east of the site proposed in the Petition for Rule Making. Site 1 was located at latitude 29° 16' 16" north and longitude 95° 01' 17" west; Site 2 at latitude 29° 13' 39" north and longitude 95° 03' 48" west and; Site 3 at latitude 29° 12' 59" north and longitude 95° 06' 39" west (all sites' coordinates are in North American Datum, 1927). The AAM predicted EMI for the same seven localizer facilities. See Attachment "D", "E", and "F." Further analyses beyond the hypotheticals already studied, are not likely to significantly change the EMI potentials.

The FAA's policy on this issue is that *any* EMI predicted by the AAM for a new transmitter is sufficient to warrant issuance of a Hazard Determination. For any proposed move of an existing transmitter facility, the potential EMI as predicted by the AAM must be less than or not exceed that of the existing station. ASA's analysis of the aforementioned sites indicated that the potential interference would be significantly greater than the existing facility. See Attachment "G." It is extremely unlikely the FAA would grant a waiver or a conditional determination to allow operation at any of the sites.

In addition to an EMI evaluation, the FAA will also conduct an aeronautical study to determine whether or not the proposed structure would exceed the standards of Federal Aviation Regulations ("FAR") Part 77, Subpart C and warrant the agency issuing a Hazard Determination. The allocation site is located approximately 10.8 nautical miles from the Alvin public use airport. Any proposed height greater than 1,482 feet above mean sea level would exceed the standards of Part 77 Subpart C. The FAA would presume this proposal to be a Hazard to Air Navigation, until an in depth aeronautical study is completed, including circularizing this proposal to the aviation community for their comments. It is probable that one issue of concern in such a study, depending on the specific location selected, would be modification of the minimum vectoring altitudes in the surrounding airspace.

In conclusion, it is my professional opinion that the FAA would object to this proposal for Channel 293C at Missouri City, Texas, based upon potential EMI to existing air navigational facilities.

Respectfully submitted,



Gary Mikel Allen, Ph.D.
Executive Vice President

Subscribed and sworn to before me, the undersigned Notary Public, this 3rd day of November 1999, by the within-named Gary Mikel Allen, well known to me to be the person executing this document.


Notary Public Signature



GARY MIKEL ALLEN

Vice President

GENERAL QUALIFICATIONS

Dr. Allen has over 28 years of technical and legal experience in aviation, engineering, and environmental planning. A substantial part of his career has been devoted to airport compatibility planning and analysis such as noise/land use, airspace obstruction evaluation, aircraft accident potential, land use risk assessment and electromagnetic interference (EMI) studies. In recent years, Dr. Allen has been heavily involved in evaluating the airspace issues under FAR Part 77 for telecommunications projects around the United States.

EXPERIENCE

During his career, Dr. Allen has designed and conducted noise monitoring and computer modeling studies at numerous of civilian airports and heliports across the nation including Los Angeles International, San Diego's Lindbergh Field, John Wayne Airport, Salt Lake City International, Houston Intercontinental, Will Rogers World and Wiley Post airports in Oklahoma City, Oakland International, and SeaTac International. Dr. Allen also collaborated with these airport operators to develop noise abatement/land use compatibility plans that met legal and public acceptability criteria. He has been similarly involved in Air Installation Compatible Use Zone (AICUZ) studies for military airfields such as NAS Alameda, NAS Barbers Point, MCAS Kaneohe Bay, and CGSC Elizabeth City. Recently Dr. Allen completed an extensive airspace modeling using SIMMOD for the civilian reuse of Norton Air Force Base and a noise study for the civilian reuse of Guam's Naval Air Station.

Dr. Allen has conducted many aircraft accident potential and land use risk assessment studies for land use development projects near such airports as John Wayne, Riverside Municipal, Bermuda Dunes, French Valley, Los Alamitos Army Airfield, and Camarillo Airports.

Additionally, he has been involved in EMI studies for FM broadcasters around the nation concerned with intermodulation effects on airport navigation aids. Also, Dr. Allen was a pioneer in wind turbine noise studies and in community noise and land use planning.

EDUCATION

Dr. Allen holds a law degree from Western State University College of Law and a Ph.D. from California Western University. He also holds an engineering degree and advanced degrees in management and environmental sciences from California universities. All of his graduate studies emphasized aviation and airport operations.

PUBLICATIONS

- "Protecting the Navigable Airspace: FAR Part 77," Aviation and Space Law Symposium Proceedings (April 1998)
- "Windfarm Noise Issues," Windpower '85 Proceedings (July 1985)
- "Environmental Noise Issues," Renewable Energies Symposium Proceedings (June 1985)
- "Wind Energy Development Noise Considerations," American Wind Energy Conf. Proceedings (July 1984)
- "Environmental Evaluation of Airport Site Selection Alternatives," Cal Western Univ. (Dec. 1981)
- "Consultant's Role in Processing of Airport Environmental Actions," AOCI Proceedings (March 1978)

AFFILIATIONS

- Member, California State Bar
- Member, Lawyer-Pilots Bar Association
- Member, American Bar Association
- Member, Federal Bar Association
- Member, ABA Committee on Environmental Controls and Sub-Committee on Air Quality

